

STATE OF MICHIGAN  
IN THE SUPREME COURT

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Appeal from the Court of Appeals  
Before: Borrello, PJ and Griffin and Owens, JJ

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CHARLES PITTS,  
Plaintiff-Appellant

Supreme Court No.: 128374  
Court of Appeals No.: 260426  
Genesee County Circuit Court No.: 02-243658-DP

v

SUSAN BEAM,  
Defendant-Appelle

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128374

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APPELLANT'S SUPPLEMENTAL BRIEF ON APPEAL

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## STATEMENT OF ISSUES INVOLVED

- I. **Whether the allegation in Plaintiff/Appellant's October 16, 2002, Complaint for Paternity that "the Defendant/Appellee was not married at the time of conception [of the minor child], nor at the time of the birth of the minor child," constitutes fraud on the court within the meaning of MCR 2.612(C)(2)?.**

The Plaintiff/Appellant answers this question "no".

The Defendant/Appellee would answer this question "yes".

The Court of Appeals was not presented with this question for review.

- II. **Whether the issue was abandoned by the Defendant/Appellee on appeal to the Court of Appeals?**

The Plaintiff/Appellant answer this question "yes".

The Defendant/Appellee would answer this question "no".

The Court of Appeals was not presented with this question for review.

## **STATEMENT OF FACTS**

The child, Nia, was born, January 17, 2001. The Defendant/Appellee (MOTHER) was married to BEAM, but for only eight more days after the birth as BEAM died on January 25, 2001. BEAM had filed for divorce in September 2000 from MOTHER and it was still pending at the time of BEAM'S death. During the twenty-one months after the birth of the minor child, the parties continued the relationship they had been involved in for months prior to the birth of their child, the MOTHER'S pending divorce and her husband's death.

The parties' relationship began to deteriorate. The Plaintiff/Appellant (PITTS) main desire was to remain in his daughter's life so he filed a Complaint for Paternity on October 16, 2002, in the Genesee County Circuit Court. At that time, the minor child was twenty-one months old, the parties' relationship was breaking-up, and both parties were single.

Two years later, MOTHER moved the Genesee County Circuit Court to set aside the Order of Filiation on the basis that the PITTS lacked standing to file the complaint. The Circuit Court refused to grant the request and MOTHER filed a Claim of Appeal. The Court of Appeals dismissed the claim for appeal for lack of jurisdiction because the order being appealed did not affect custody of a minor child.

MOTHER then requested a delayed application for leave to appeal from the Court of Appeals. The basis for her appeal was that the trial court had committed error by denying the request to set aside the Order of Filiation. MOTHER never clearly addressed or briefed the issue of whether or not fraud was committed in the filing of the complaint. The Court of Appeals, in lieu of granting the delayed application for appeal, vacated the Circuit Court order.

PITTS then filed his application for leave to appeal with this Honorable Court.

- I. Whether the allegation in Plaintiff/Appellant's October 16, 2002, Complaint for Paternity that "the Defendant/Appellee was not married at the time of conception [of the minor child], nor at the time of the birth of the minor child," constitutes fraud on the court within the meaning of MCR 2.612(C)(2)?**

### **STANDARD OF REVIEW**

Whether the Plaintiff/Appellant committed fraud is a question of law. This Court reviews questions of law for clear legal error, *Fletcher v Fletcher*, 229 Mich. App.19; 581 NW 2d 11 (1998).

### **ARGUMENT**

The Plaintiff/Appellant's (PITTS) statement in the his Complaint for Paternity that the Defendant/Appellee (MOTHER) was unmarried at the time of conception to birth was untrue as she was married until eight days after the birth when her husband died. But at the time the complaint was filed MOTHER was unmarried and had been for approximately twenty-one months. This could explain why PITTS failed to understand the true meaning of "The Defendant was not married at the time of conception nor at the time of the birth of the minor child."

It is understandable how PITTS might have made the statement by misunderstanding the true legal meaning. He could have been thinking that at the time he signed the complaint the MOTHER was not married and with the fear of not being able to play a role in his daughter's life, may not have read the pleadings as carefully as he should have.

But did he commit "fraud on the court within the meaning of MCR 2.612 (C) (2)"? The elements of fraud are: (1) that the charged party made a material representation; (2) that it was false; (3) that when he or she made it he or she knew it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he or she made it with the intention

that it should be acted upon by the other party; (5) that the other party acted in reliance upon it; and (6) that the other party thereby suffered injury. *Scott v Harper Recreation, Inc*, 444 Mich 441, 446 n 3; 506 NW2d 857 (1993).

The statement that MOTHER was unmarried is clearly a material representation. PITTS would only have standing to bring a Paternity suit if MOTHER was unmarried. It was false as MOTHER was married until eight days after the birth. PITTS admitted to the court that he knew MOTHER was married, *Pitts v Beam*, Genesee County Circuit Court, December 10, 2004, at 24.

However, he also stated to the court he had misunderstood, *Pitts*, Id. The confusion between who was Plaintiff and Defendant and that at the time he was signing the complaint that MOTHER was unmarried most likely caused the unintentional false statement to be made.

The elements of fraud that it was made "... with the intention that it should be acted upon by the other party" and "that the other party acted in reliance upon it" is only fulfilled when the "other party" is the court as the MOTHER clearly did not act upon the statement as is shown by her failure to respond to the complaint. The court acted upon the statement when it entered the Order of Filiation.

MOTHER did not suffer injury, the final element, by her reliance on the statement. Any injury MOTHER claims to have incurred is only attributable to her own actions. If she had answered the complaint and brought the fact of her marriage to the court's attention at the beginning the Order of Filiation would not have been entered. Instead, she chose to ignore our system of justice.

But if the court is the other party it did suffer injury when, whether by a misunderstanding or not, it entered an order based on the false statement? If our justice system is to work properly it

must be able to confidently rely on the statements made to it. If false statements were an everyday occurrence people would not rely on our judicial system and would take justice into their own hands.

But does this statement constitute fraud on the court within the meaning of MCR 2.612 (C) (2)? No, the court rule, which states:

The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken.

is not fulfilled as the motion asking for relief from the Order of Filiation was not made for over one year after the entry of the order. MOTHER was perfectly happy to flaunt our system of justice until she was in need of its assistance for her own benefit. She ignored the complaint and admitted getting other court papers but again chose not to do anything about them, *Pitts, at 39*. It was only after PITTS was able to get physical custody of the minor child that MOTHER filed her motion almost two years after the order she is seeking to rescind was entered.

**II. Whether the issue was abandoned by the Defendant/Appellee on appeal to the Court of Appeals?**

**ARGUMENT**

The Defendant/Appellee MOTHER abandoned the issue of fraud on appeal. The only issue submitted to the Court of Appeals in MOTHER'S Delayed Application for Leave to Appeal was whether or not it was clear error for the trial court to deny her motion to rescind the order of filiation. While the brief does mention that PITTS knew MOTHER was married at the time he filed his Complaint for Paternity it totally fails to fully outline and brief this potential issue.

The question of whether or not an issue has been abandoned on appeal has been discussed



in a number of cases. For example, in *Prince v MacDonald*, 237 Mich App 186; 602 NW2d 834 (1999) where the Plaintiff failed to address the issue of her religious discrimination claim on the various grounds it was excluded at trial, the Court of Appeals deemed the issue abandoned and stated, “It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court.” at 197. And further stated, “Because plaintiff has failed to address the merits of the trial court’s evidentiary rulings and offer support for her position, the issues raised...are abandoned.” Id.

In *People v Harris*, 261 Mich App 44; 680 NW2d 17 (2004) where the Defendant argued that the failure to disclose the name of a confidential informant would have changed his case but failed to explain how it would have affected the outcome the Court of Appeals stated at page 50 “...defendant has announced a position, and left it to this Court to “discover and rationalize the basis for the claim.” quoting *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997). In the present case, MOTHER didn’t even announce the possibility of fraud in her appeal which thereby fully burdened the Court of Appeals to “discover and rationalize” the issue.

And, finally, in *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379; 651 NW2d 756 (2002), where the Plaintiff’s case concerning the determination of what the level of Bambi Lake should be was dismissed based on res judicata, the Court of Appeals found that the Plaintiff made no attempt to “specifically address” the summary disposition, Id. at 406. The Court then went on to quote *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959):

It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.

The Court then concluded the issue had been abandoned and declined to address it.

**CONCLUSION**

MOTHER'S appeal to the Court of Appeals fails to address the issue of fraud by either raising the issue or supplying any authority upon which to base the issue therefore the issue should be deemed to be abandoned.

**RELIEF REQUESTED**

WHEREFORE, for the reasons set forth above the Plaintiff/Appellant respectfully prays this Honorable Court to:


First: determine that fraud was not committed on the court within the meaning of MCR 2.612(C)(2);

Second: determine that the Defendant/Appellee abandoned the issue of fraud on appeal;

Third: grant the Plaintiff/Appellant's request for Leave to Appeal.

Respectfully submitted,

Dated: November 24, 2005

  
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